IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11959 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRUTA VIJAY VORA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 11959 of 2002

MR RAVINDRA SHAH for Petitioner No. 1

MRS KANAN R SHAH for Petitioner No. 1

Mr.N.J.Shah for MR DN PATEL for Respondent No. 1

SERVED BY RPAD - (N) for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/07/2003

ORAL JUDGEMENT

Mr.N.J.Shah for Mr.D.N.Patel waives service of rule on behalf of respondent-passport authorities. Respondent No.2-Ashokkumar Narsibhai Solanki who is

appearing party in person has no objection if the matter is taken up for ordering issuance of passport as per the adoption deed in respect of the petitioner-Amruta Vijay Vora, and therefore, the matter is taken up for final hearing today with the consent of all parties.

2. The short facts of the case are that the petitioner is the daughter borne out of the marriage of Alkaben Chunilal Bhokiya with Ashokumar Narsibhai Solanki-the respondent No.2 herein. The marriage of aforesaid Ashokkumar and Alkaben had taken place on 16.5.1989 and thereafter the petitioner was borne on 13.5.1991. It appears that because of differences between Alkaben and Ashokbhai Hindu Marriage Petition No.51/94 was filed in the court of District Judge, Junagadh for consent divorce. On 10.10.1994 the divorce deed was also executed between aforesaid husband and wife, namely, Ashokbhai and Alkaben and as per the said deed the custody of the petitioner was to be retained by the mother, namely, Alkaben. The said deed was also placed before the Ld.Dist.Judge and a decree for dissolution of marriage was passed accordingly.

3. It is the case of the petitioner that on 29.6.02, the mother of the petitioner, namely, Alkaben married with one Vijay Hiralal Vora who is citizen of USA and the marriage of Alkaben with Vijay Hiralal Vora is registered on 1.7.02 with the Registrar of Marriages, Ahmedabad city. Thereafter, on 3.7.02 the registered adoption deed is executed by Vijay Hiralal Vora adopting the petitioner as his daughter. It is the case of the petitioner that she is since then treated as the daughter of Vijay Hiralal Vora.

4. The petitioner has applied for passport bearing File No.M 006761 and the application for the passport is made on 11.9.02. It is further the case of the petitioner that in the birth registration certificate name of the biological father, namely, Ashokbhai Narsibhai Solanki is there and, therefore, the passport authority may not issue passport by showing the name of Vijay Hiralal Vora as the lawful father on the date of application for passport and therefore the petitioner has approached this court. It is also the further case of the petitioner that a paper advertisement was also given on 20.10.02 for change of her identity by showing the name as Amrut Vijay Vora and the said formality is completed. However, since the matter is pending before the passport authority the petitioner has preferred this petition praying for appropriate direction to the passport authority to issue passport as applied by the

petitioner on the name of Amrut Vijay Vora.

5. Initially, Ashokkumar Narsibhai Solanki was not impleaded as party and subsequently he was added as party and notice was also issued to him. He has appeared and today also he remained present. He submitted that he has no objection to the adoption nor he has any objection if the passport is issued to the petitioner on the name of Amrut Vijay Vora being adopted daughter of Vijay Hiralal Vora.

6. Even otherwise also, as per section 16 of Hindu Adoption & Maintenance Act, 1956 (hereinafter referred to as "the Act") when any adoption deed is registered there shall be a presumption for documents relating to the adoption and the presumption shall be that the adoption has been made in compliance with the provisions of Act unless and until it is disproved. Such presumption can be made applicable not only in court proceedings but such presumption in view of Section 16 can also reasonably be made applicable even at the time when the authority has to consider the matter for issuance of passport because the passport authority while considering the matter for issuance of passport is also acting as a quasi judicial authority.

7. More over, the record which is produced in this petition also goes to show that as per the deed of dissolution of marriage or deed of divorce it was agreed between Ashokbhai and Alkaben that the custody of the daughter who is petitioner herein is to remain with Alkaben, the mother. When the mother Alkaben has married Vijay Hiralal Vora there is sufficient proof for marriage and since the factum of registration of marriage is legal, Ashokbhai even otherwise also would not be able to challenge the adoption made by Vijay Hiralal Vora who has become the father of the petitioner on account of her biological mother remarrying with Vijay Hiralal Vora.

8. In view of the aforesaid facts and circumstances of the case, I find that the passport authority should consider the matter accordingly as per the observations and findings recorded by this court for issuance of passport on the basis that Amruta-the petitioner herein is now lawful daughter of Vijay Hiralal Vora irrepsective of the entry in the birth register because the position prevailed at the time of birth and its registration was different on account of subsequent change in the status of the petitioner and considering the peculiar circumstances the birth certificate can only be relied for the purpose of date of birth and not for the purpose

of ascertaining the status of lawful father on the date of the application for passport.

9. Therefore, the passport authority, namely the Regional Passport Officer, Ahmedabad is directed to consider the application of the petitioner for passport considering the petitioner as the lawful daughter of Vijay Hiralal Vora and to issue the passport as early as possible preferably within a period of four weeks from the date of receipt of writ of this court. Petition is allowed to the aforesaid extent.

10. Considering the facts and circumstances of the case and in any case it can not be said that there is any fault on the part of the passport authorities I am of the view that the passport authorities should be awarded the costs of Rs.2,500/- which the petitioner shall pay to the Regional Passport Officer, Ahmedabad directly.

11. Rule is made absolute accordingly. DS permitted.

23.7.03 (JAYANT PATEL,J)